

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DEBORAH STANLEY

PLAINTIFF

v.

CASE NO. 5:08-CV-0004 BSM

TYSON FOODS, INC.

DEFENDANT

ORDER

Pending before the court is plaintiff's Motion to Alter or Amend, Request for Hearing, and Motion for Sanctions [Doc. No. 83]. In her motion, plaintiff seeks: (1) permission to supplement her motion for class certification and reply with the 30(b)(6) depositions ordered by the court; (2) Rule 37 sanctions requiring the defendant to reimburse her for the cost of preparing the expert report along with fees and cost; (3) clarification as to whether her expert report can be used at trial; and (4) a hearing on her motion for class certification.

After reviewing plaintiff's motion, as well as the record, the court rules as follows:

1. The court denies the request to supplement plaintiff's motion for class certification because this motion is another attempt at amending plaintiff's motion for class certification and, as per the court's order of November 24, 2008 [Doc. No. 66], plaintiff's request to supplement her motion for class certification is denied;

2. The court denies plaintiff's request for reimbursement of the fees and costs incurred in preparing the expert report. On November 5, 2008, plaintiff's motion to compel was granted in part and denied in part [Doc. No. 57]. When a court grants a motion to compel in part and denies it in part, the court may apportion the reasonable expense of the

motion. Fed. R. Civ. P. 37(a)(5)(C). Rule 37(b) provides for the imposition of sanctions when a party fails to obey an order to provide discovery. The defendant has complied with the court's order. The plaintiff is, therefore, not entitled to reimbursement of her fees and costs;

3. Plaintiff's motion for clarification of the court's December 22, 2008 order [Doc. No. 82] is granted. In the order, the court found that plaintiff's expert report was untimely filed. As a result of this untimely filing, plaintiff is not only precluded from using the report in support of her motion for class certification, she is also precluded from using the report at trial; and

4. At this time, the court has insufficient knowledge as to whether plaintiff can satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. Therefore, the court holds in abeyance its ruling on plaintiff's request for a hearing on her motion for class certification.

Accordingly, plaintiff's motion to Alter or Amend, Request for Hearing, and Motion for Sanctions [Doc. No. 83] is hereby granted in part and denied in part.

IT IS SO ORDERED this 2nd day of March, 2009.


UNITED STATES DISTRICT JUDGE